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Goh Say Joo & Ors v Dato" Lim Ah Chap

HIGH COURT (KUANTAN) — ORIGINATING SUMMONS NO 24–50 OF 2003

B HELILIAH J

1 JULY 2004

C *Unincorporated Associations — Internal management — Meetings — Convening of extraordinary general meetings in contravention of internal rules — President acting in excess of powers — Whether meeting convened in contravention of rules was illegal — Whether AGM held pursuant to illegal meeting was also null and void*

D The plaintiffs and the defendant were members of the Jerantut Chinese Chambers of Commerce Pahang ('JCCCP') and therefore were governed by the rules of the Jerantut Chinese Chamber of Commerce Pahang ('the JCCCP Rules'). The defendant was the President of the JCCCP and the first plaintiff was its assistant secretary. On 2 January 2003, the secretary of the JCCCP had issued a notice to convene the 12th Exco meeting to be held on 10 January 2003. However, on E 8 January 2003, the President had on his own accord issued a notice to adjourn the 12th Exco meeting. Consent of the Exco members was not sought before issuing the notice to adjourn. The plaintiffs had objected to the adjournment of the 12th Exco meeting. On 10 January 2003, the plaintiffs convened the 12th Exco meeting. During the 12th Exco meeting, the following resolutions were passed: (1) that 172 F new members were admitted as members of the Chamber and (2) that the Annual General Meeting ('AGM') of the Chamber was to be held on 13 April 2003. On 5 February 2003, it was alleged the JCCCM purportedly received a members' requisition to convene an Extraordinary General Meeting ('EGM'). On 11 February 2003, some of the plaintiffs received an undated notice to attend the EGM on 18 February 2003. On 18 February 2003, the EGM was convened where the G following resolutions were passed: (1) the secretary and assistant secretary be removed; (2) the resolutions passed during the 12th Exco Meeting were invalid; (3) the President of the Chamber was authorized to be the secretary and assistant secretary of the Chamber until the AGM and (4) the AGM shall be convened on 23 March 2003. On 14 March 2003, the plaintiffs filed this action into court and H sought inter alia, the following: (1) a declaration that the EGM held on 18 February 2003 was unlawfully convened and all resolutions passed in the EGM were null and void and (2) a declaration that the first plaintiff (as assistant secretary) was unlawfully removed at the EGM (3) a declaration that the defendant had been unlawfully conferred at the EGM with powers to act as the secretary and assistant secretary of the JCCCP and (4) a declaration that the resolution inter alia passed at the EGM to I convene the AGM held on 23 March 2003 was null and void. Counsel for the plaintiffs had averred that pursuant to r 11(3) of the JCCCP rules, no proper instructions had been issued to the first plaintiff (in the absence of the secretary) to convene an EGM. Rule 12(c) provided that in the absence of the secretary, the first plaintiff as assistant secretary was enabled to discharge the functions of a secretary.

Held, allowing the plaintiff's application:

(1) The President had displayed unilateral exercise of powers in infringement of r 7(b) that resulted in unauthorized members casting votes. The infringement of the rules verged on the EGM being wrongfully convened independently of the Exco which was vested with the power of running the activities of the JCCCP (see para 25).

(2) Since the EGM was convened on the basis of non-compliance with the rules, the resolutions undertaken during the EGM of 18 February 2003 were therefore null and void and of no effect. The purported removal of the first plaintiff was also rendered to be of no effect since the EGM should not have been convened in the first place. The justice of the case also indicated that certain members were not given the opportunity to be heard (see para 26). The defendant had failed to rebut the allegations particularly any rationalized explanation for the application of the JCCCP rules in the manner that the President had manipulated it. It was evidence of an authoritarian approach and sheer disregard for the JCCCP rules (see para 27).

(3) Rule 11(7) indicated that it was also not the President who held the ultimate authority in the interpretation of the rules since that rule stipulated that between General Meetings, the Executive Committee shall interpret the rules of the Chamber and when necessary determine any matter on which the rules are silent (see para 28).

(4) On a balance of probabilities it was found that the plaintiff had established a case of a President who had purported to act not in accordance with rules which were equally binding on him but had actually acted in excess of the powers (see para 29). The EGM that had been convened at the instance of the defendant, on the basis that it contravened the rules was therefore illegal and in consequence, null and void and consequently too the AGM with all the resolutions that were carried at that time (see para 30).

[Bahasa Malaysia summary

Plaintif-plaintif dan defendan adalah ahli Dewan Perniagaan Cina Jerantut Pahang ('JCCCP') dan dari itu adalah tertakluk kepada peraturan-peraturan Dewan Perniagaan Cina Jerantut Pahang ('Peraturan-peraturan JCCCP'). Defendan adalah President JCCCP dan plaintif pertama adalah penolong setiausaha. Pada 2 Januari 2003, Setiausaha JCCCP telah mengeluarkan satu notis untuk mengadakan mesyuarat Exco yang ke 12 pada 10 Januari 2003. Tetapi, pada 8 Januari 2003, Presiden telah dengan sendirinnya mengeluarkan satu notis menangguh mesyuarat Exco ke 12 itu. Persetujuan dari ahli-ahli Exco tidak diperolehi sebelum notis penangguhan itu dikeluarkan. Plaintif-plaintif membantah penangguhan mesyuarat Exco ke 12 itu. Pada 10 Januari 2003, plaintif-plaintif telah mengadakan mesyuarat Exco yang ke 12. Semasa mesyuarat Exco ke 12 itu, resolusi-resolusi berikut telah diluluskan: (1) bahawa 172 ahli baru diterima menjadi ahli baru dewan perniagaan tersebut; dan (2) bahawa Mesyuarat Agung Tahunan ('MAT') Dewan tersebut dibuat pada 13 April 2003. Pada 5 Februari 2003, JCCCM didakwa telah menerima permohonan dari seorang ahlinya untuk mengadakan satu Mesyuarat Agung Luarbiasa ('MAL'). Pada 11 Februari 2003, setengah dari plaintif-plaintif menerima

A sepucuk notis tidak bertarikh untuk hadir ke MAL pada 18 Februari 2003. Pada 18 Februari 2003, MAL telah diadakan dimana resolusi-resolusi berikut telah diluluskan: (1) Setiausaha dan Penolong Setiausaha dibuang; (2) resolusi-resolusi yang telah dilulusakan semasa Mesyuarat Exco ke 12 adalah tidak sah; (3) President Dewan tersebut diberikuasa untuk menjadi Setiausaha dan Penolong Setiausaha
B Dewan tersebut sehingga MAT; dan (4) MAT akan diadakan pada 23 Mac 2003. Pada 14 Mac 2003, plaintif-plaintif memfailkan tindakan ini di mahkamah dan memohon antara lain, yang berikut: (1) satu perisytiharan bahawa MAL yang diadakan pada 18 Februari 2003 telah diadakan secara tidak sah, dan kesemua resolusi-resolusi yang diluluskan pada MAL tersebut adalah batal dan tak sah; dan (2) satu perisytiharan bahawa plaintif pertama (sebagai Penolong Setiausaha) telah
C dibuang secara tidak sah semasa MAL; (3) satu perisytiharan bahawa defendan telah secara tak sah disisi undang-undang diberikan kuasa untuk bertindak sebagai Setiausaha dan Penolong Setiausaha JCCCP; dan (4) satu perisytiharan bahawa resolusi yang diluluskan pada MAL untuk mengadakan MAT pada 23 Mac 2003 adalah batal dan tak sah. Peguamcara kepada plaintif-plaintif mengatakan bahawa
D selaras dengan k 11(3) Peraturan-peraturan JCCCP, tiada arahan dikeluarkan kepada plaintif pertama (semasa ketiadaan Setiausaha) untuk mengadakan satu MAL. Kaedah 12(c) memperuntukkan yang dalam ketiadaan Setiausaha, plaintif pertama sebagai Penolong Setiausaha boleh menjalankan fungsi-fungsi seorang Setiausaha.

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Diputuskan, membenarkan rayuan plaintif:

(1) Presiden telah menunjukkan satu penggunaan kuasa sebelah pihak dan bertentangan dengan k 7(b) yang mengakibatkan ahli-ahli yang tidak dibenarkan membuang undi. Perlanggaran peraturan-peraturan tersebut
F menjadikan MAL diadakan secara tidak betul tanpa Exco yang diberi kuasa menjalankan kegiatan-kegiatan JCCCP (lihat perenggan 25).

(2) Oleh kerana MAL itu diadakan dengan berasaskan ketidakpatuhan peraturan-peraturan, resolusi-resolusi yang diluluskan semasa MAL pada 18 Februari 2003 adalah dengan itu batal dan tak sah dan tidak mempunyai
G kesan. Pembuangan plaintif pertama yang dikatakan itu juga menjadi tidak berkesan kerana MAL tersebut pada asalnya tidak wajar diadakan. Keadilan kes ini juga menunjukkan bahawa sebahagian dari ahli-ahli tidak diberi peluang untuk didengar (lihat perenggan 26). Defendan telah gagal untuk membangkang dakwaan-dakwaan terutamanya sebarang penjelasan mengenai gunapakai Peraturan JCCCP yang mana telah dimanupulasikan oleh Presiden.
H Ianya adalah satu bukti mengenai pendekatan secara otoritatif yang jelas tidak sama sekali menghiraukan Peraturan JCCCP (lihat perenggan 27).

(3) Kaedah 11(7) menunjukkan juga bahawa bukan Presiden yang memegang kuasa tertinggi dalam mentafsir peraturan-peraturan tersebut kerana peraturan itu menyatakan bahawa diantara Mesyurat Agung, Jawatankuasa Eksekutif
I akan mentafsirkan peraturan-peraturan Dewan tersebut dan apabila perlu memutuskan sebarang perkara yang mana tidak diperuntukkan oleh peraturan-peraturan tersebut (lihat perenggan 28).

(4) Pada imbangan kebarangkalian, ianya didapati yang plaintif telah membuktikan kes seorang Presiden yang dikatakan bertindak tidak selaras

dengan peraturan-peraturan yang mengikat dirinya tetapi sebenarnya telah bertindak melebihi kuasa-kuasanya (lihat perenggan 29). MAL yang telah diadakan pada arahan defendan, pada asas yang ianya tidak mematuhi peraturan-peraturan tersebut, dengan ini adalah tidak sah disisi undang-undang dan oleh yang demikian, adalah batal dan tak sah, maka dari itu, MAT dan kesemua resolusi-resolusi yang diluluskan pada MAT tersebut juga batal dan tak sah (lihat perenggan 30).]

Notes

For cases on unincorporated associations, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2483–2495

Cases referred to

Hilborne v Singapore Island Country Club [1996] 2 SLR 468 (refd)
Pengarah Tanah & Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 148 (refd)
Pyx Granite Estates Ltd v Ministry of Housing and Local Government [1960] AC 260 (refd)
Tan Kah Wich & Ors v Datuk Phua Cheng Leong & Ors [1979] 2 MLJ 259 (refd)

Legislation referred to

Rules of the Jerantut Chinese Chamber of Commerce Pahang rr 9(a), 10, 11(3), (5), (7), 12(c), 16
Societies Act 1966 s 9(c)
Specific Relief Act 1950 ss 50, 51, 52, 53

Andrew Chiew Ban Vooi (Lee Hishamuddin) for the plaintiffs.
J Goldie (Jacob Goldie & Toh) for the defendant.

Heliliah J:

[1] In this action (encl 3), the plaintiffs sought, inter alia, the following:

(1) a declaration that an Extraordinary General Meeting (EGM) held on 18 February 2003 was unlawfully convened, and all resolutions passed in the EGM are null and void; and

(2) a declaration that the first plaintiff (as assistant secretary) was unlawfully removed at the EGM;

(3) a declaration that the defendant had been unlawfully conferred at the EGM with powers to act as the secretary and assistant secretary of the Jerantut Chinese Chamber of Commerce Pahang; and

(4) a declaration that the resolution *inter alia* passed at the forementioned EGM to convene the Annual General Meeting (AGM) held on 23 March 2003 is null and void

[2] The other prayers were not dealt as certain events had overtaken the relief sought.

[3] The court has jurisdiction and power to make declaratory judgments but it is a discretionary remedy. That power is also confined to matters which are justiciable and it must be justified by the circumstances of the case.

[4] The court was asked to decide on an issue which concerned membership rights in a society. The plaintiffs and the defendant being members of the Jerantut Chinese Chambers of Commerce Pahang (JCCCP) were governed by the rules of the Jerantut Chinese Chamber of Commerce Pahang (JCCCP rules).

[5] Both the plaintiffs and the defendant had set out certain events which had taken place and which had culminated in the filing of encl 3. The following constitute the matrix of relevant events:

(1) The plaintiffs were members of the JCCCP. The plaintiffs were also members of the Executive Committee of the JCCCP or the EXCO.

(2) The defendant is the President of the JCCCP. The President has been sued and named as a party to the proceedings by virtue of s 9(c) of the Societies Act 1966. Section 9(c) of the Societies Act 1966 states that:

> (c) a society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any office-bearer of the society;

(3) On 2 January 2003, the Secretary of the JCCCP had issued a notice to convene the 12th EXCO Meeting to be held on 10 January 2003 (exh G-2 of Goh Say Joo's affidavit dated 7 May 2003 at pp 18–19).

(4) On 8 January 2003, the President had on his own accord issued a notice to adjourn the 12th EXCO Meeting. Consent of the EXCO members was not sought before issuing the notice to adjourn (exh G-3 of Goh Say Joo's affidavit dated 7 May 2003 at pp 20–21).

(5) The plaintiffs had objected to the adjournment of the 12th EXCO Meeting (exh G-4 of Goh Say Joo's affidavit dated 7 May 2003 at pp 22–23).

(6) On 10 January 2003, the plaintiffs convened the 12th EXCO Meeting. During the 12th EXCO Meeting, the following resolutions were passed:

(a) that 172 new members were admitted as members of the Chamber. This resolution by the EXCO was contained in item 8 of the minutes of meeting in exh G-8 of Goh Say Joo's affidavit dated 7 May 2003 at pp 30 and 31; and

(b) that the annual general meeting (AGM) of the Chamber was to be held on 13 April 2003. This resolution by the EXCO is contained in item 9.3 of the minutes of the meeting found in exh G-8 of Goh Say Joo's affidavit dated 7 May 2003 at pp 30 and 31.

(7) On 5 February 2003, it was alleged the JCCCM purportedly received a members' requisition to convene an Extraordinary General Meeting (EGM).

The EGM requisition was signed by 38 persons (exh G-9 of the affidavit affirmed by Goh Say Joo on 7 May 2003 at pp 36–43).

(8) On 11 February 2003, some of the plaintiffs received an undated notice to attend the EGM on 18 February 2003. The EGM notice had set out the following agenda:

(a) a motion to remove the secretary and assistant secretary of the Chamber;

(b) a motion to 'reject' the 12th EXCO Meeting and all resolutions passed in the 12th EXCO Meeting;

(c) to authorize the President of the Chamber to be secretary and assistant secretary of the Chamber until the AGM; and

(d) to convene the next AGM on 23 March 2003.

The EGM notice was in exh G-10 of the affidavit affirmed by Goh Say Joo on 7 May 2003 at pp 44–45.

(9) On that same day, 18 of the 38 members withdrew their respective requisitions to convene the EGM after the EGM notice was issued. The withdrawals were found in exh G-11 of Goh Say Joo's affidavit dated 7 May 2003 at pp 48–83.

(10) Subsequent to the said withdrawals, the JCCCM purportedly received fresh 're-applications' for the EGM from 30 persons on 14 Februaray 2003 (exh PDPCJ-6 of the affidavit affirmed by Dato' Lim Ah Chap on 20 March 2003 (encl No: 10a) at pp 114–173).

(11) On 18 February 2003, the EGM was convened. Before the commencement of the EGM, the first plaintiff objected to the convening of the EGM. However the first plaintiff's objection was of no avail. The first plaintiff thereafter left the EGM before its commencement.

(12) In the EGM, the following resolutions were passed:

(a) the secretary and assistant secretary be removed;

(b) the resolutions passed during the 12th EXCO Meeting were invalid;

(c) the President of the Chamber was authorized to be the secretary and assistant secretary of the Chamber until the AGM; and

(d) the AGM shall be convened on 23 March 2003.

The passing of the above resolutions was set out in the minutes of the EGM found in exh PDPCJ-2 of encl No: 10a at pp 26–33.

(13) On 14 March 2003, the plaintiffs filed this action into court.

(14) On 23 March 2003, the AGM was convened.

The plaintiffs alleged that the resolutions in the EGM brought about two adverse consequences, namely:

(a) as a result of the resolution to nullify the resolutions passed during the 12th EXCO Meeting, 172 new members lost their rights of membership; and

A (b) the secretary and the assistant secretary, that is the first plaintiff had been wrongfully removed.

The plaintiffs further alleged that the EGM had been unlawfully convened based on the following four grounds:

B (a) the EGM requisition was invalid;

(b) the President had wrongfully convened the EGM without the agreement of the EXCO;

(c) the President had no power to issue the EGM notice; and

C (d) the EGM was carried out in derogation of membership rights.

[6] It was found that the catalyst for the various relief being sought was to be traced to the EGM held on 18 February 2003 and following which an AGM on 23 March 2003 was convened.

D **[7]** The evidence disclosed that an EXCO meeting held on 10 January 2003 was chaired by the Deputy President of the JCCCP. Although that meeting appeared to have been convened at the instance of the defendant, the defendant himself was absent but the EXCO continued to be convened (with the Deputy President present) and had also fixed an Annual General Meeting to be convened on 13 April 2003. E Thereafter several events occurred which showed that certain members had initiated certain resolution seeking rejection of the EXCO meeting of 10 January 2003. Questions were also raised whether an EGM that was requested to have been held on 18 February 2003 were properly moved. It would then appear that there were certain factions in the JCCCP that were brewing resistance against the decision of the EXCO of 10 January 2003. The defendant however had moved for an EGM to be convened F on 18 February 2003 (EGM 18 February 2003). It was deposed that several members had been precluded from participating in this EGM. The first plaintiff attended the (EGM 18 February 2003) and attempted to furnish certain explanation regarding the regularity or otherwise of EGM. Apparently, he failed and the EGM continued to be convened. This EGM formed the basis of the following that is:

G (a) the removal from office of the secretary and the first plaintiff (as assistant secretary);

(b) that resolutions passed during the 12th EXCO meeting were invalid;

(c) that the President be authorized to be the secretary and assistant secretary of H the Chambers until an AGM was held;

(d) that an AGM was to be convened on 23 March 2003.

[8] Declaratory orders have been applied in numerous and varied situations. Nevertheless there are certain guidelines which the court had to take into account. I In so far as associations and clubs, or even professional societies are concerned plaintiffs' counsel have referred the decision in *Tan Kah Wich & Ors v Datuk Phua Cheng Leong & Ors* [1979] 2 MLJ 259 per Wan Suleiman FJ (as he then was):

> With the learned trial judge's finding of law as regards the effect of the constitution or rules of the Association on members, we would with respect agree. On pp 5 and 6 of the sixth

Edition of Shackelton on The Law and Practice of Meetings appears the following passage. In the case of unincorporated associations such as clubs, trade unions, professional societies and the like, the rules as adopted between the members inter se are the source of the regulations to be applied in their members' meetings, and though such rules do not possess the force of law given to the rules of incorporated bodies by virtue of the incorporating statute, they are enforceable as terms of the implied contract involved in the fact of membership.

Sometimes, not only when rules are silent on some point, but where they appear to operate unfairly, it is possible for the courts to have regard to the principles of natural justice in order to reach a decision in a disputed situation.

A decision in this matter would depend solely on interpretation of the rules of the Association. It is well to remember as was held in *Lee v Showmen's Guild of Great Britain*, (1) that construction of the rule is always a question of law (see also *Baker v Jones & Ors* (2)

[9] What was being sought from the court was not only a question of how the rules governed the relationship of the plaintiffs and the defendant as members of the JCCCP but also an issue pertaining to the interpretation of the rules of the JCCCP and how the rules had been allocated. The said rules also provided the distribution of certain responsibilities amongst the members.

[10] The issue therefore was related to the application of certain rules to the members. The court had taken note of several rules referred to by both counsels that is Rules 9, 10, 11, 12. The provisions of rule 10 (a)(i) and (ii) are first reproduced as follows:

10 EXTRAORDINARY GENERAL MEETINGS

(a) An Extraordinary Meeting of the Chamber shall be convened:

  (i) Whenever the Executive Committee deems it desirable; or

  (ii) At the joint request in writing of not less than 20 members stating the objects and reasons for such meeting.

(b) An Extraordinary General Meeting requested by members shall be convened for a date within 14 days of the receipt of such requisition.

(c) Notice and Agenda for an Extraordinary General Meeting shall be forwarded by the Secretary to all members, at least 7 days before the date fixed for the meeting.

(d) No business shall be transacted at such meeting other than those specified in the Agenda and no amendment to any item for discussion proposed for the meeting shall be allowed.

(e) The quorum and postponement of the Annual General Meeting shall apply also to an Extraordinary General Meeting but with the proviso that if no quorum is present half an hour after the time appointed for the Extraordinary General Meeting requisitioned by members, the meeting shall be cancelled and no Extraordinary General Meeting shall be requisitioned for the same purpose until after the lapse of at least six (6) months from the date thereof. But in the case of the meeting convened in accordance with (10)(a)(i), the procedure of postponement for the Annual General Meeting stated in 9(b) shall apply.

[11] Rule 9 (a) states:

9 GENERAL MEETINGS

Supreme Authority of the Chamber shall be vested in a General Meeting of Members. The Annual General Meeting of the Chamber shall be held after December 31st and not later than April each year to transact the following business:

(i) To receive and if approved, to adopt the Annual Report and audited statement of accounts for the previous year;

(ii) To elect an Executive Committee and to appoint auditors, if applicable;

(iii) To deal with such other matter as may be put before it.

[12] The EGM in question had determined the date of the AGM, that is 23 March 2003. If the EGM was not lawfully convened then the illegality would also taint the AGM. In my view managing the affairs of the Chamber is not synonymous with the controlling of the Chambers as the President was not vested with the residual powers power in everything. The Rules had allocated certain functions. Nevertheless in its allocation it did not really vests overriding powers in certain individuals without regard to certain specific purposes. Rule 12 specifies 'duties' and not power. Rule 12 states:

12 DUTIES OF OFFICE BEARERS

(a) The President shall manage all affairs of the Chamber and he shall also represent the Chamber in all external matters. He is authorized to expend a sum not exceeding $200.00 at any one time. He shall preside at all General Meetings and Executive Committee Meetings and shall be responsible for the proper conduct of such meetings.

(b) The Deputy President shall assist the President in all affairs and in the absence of the President, shall act in his place.

(c) The Vice Presidents shall assist the President, Deputy President in all affairs and in the absence of the President or Deputy President, one of the Vice Presidents shall act in his place.

(d) The secretary shall be responsible for the implementation of the decision of the General Meeting, and Executive Committee Meeting. He shall conduct all correspondence and supervise all employees of the Chamber. He shall attend all meetings and record the proceedings. He shall maintain a membership register containing particulars of name, date of admission, age (date of birth), identity card number, address and occupation of individual members and representative of firm or corporate members, in case of firm or corporate members also include the name and address of the firms.

(e) The assistant secretary shall assist the secretary in all affairs and in the absence of the secretary, shall act in his place.

(f) The Arbitration Officer shall mediate and arbitrate any dispute among members with their consent to reach an amicable settlement.

Rules 11(3), (5) and (7) were also noted and are as follows:

11 EXECUTIVE COMMITTEE

(1).....

(3) The function of the Executive committee is to organize and supervise the day-to-day activities of Chamber. It shall furnish a report to each Annual General Meeting on its activities during the previous year.

(5) Where any urgent matter requiring the approval of the Executive Committee arises and it is not possible to convene a meeting, the Secretary may obtain much approval by means of a circular letter. The following conditions must be fulfilled before a decision of the Executive Committee is deemed to have been obtained:

(a) The issue must be clearly set out in the circular and forwarded to all members of the Executive Committee.

(b) At least one half of the members of the Executive Committee must indicate whether they are in favour or against the proposal.

(c) The decision must be by a majority vote. Any decision obtained by circular letter shall be reported by the secretary to the next Executive Committee meeting and recorded in the minutes thereof.

(7) Between General Meetings, the Executive Committee shall interpret the rules of the Chamber and when necessary determine any matter on which the rules are silent. Except where they are contrary to or inconsistent with the policy previously laid down by the General Meeting the decision of the Executive Committee shall be binding on all members of the Chamber unless and until countermanded by a resolution of a General Meeting.

Enclosure 3 was opposed on several grounds but the principal ones were:

(a) the subject matter of the action was more of a dispute among members or office bearers of a society and as such the proper forum was the Registrar of Societies and not the High Court based on s 16 of the Societies Act 1966;

(b) the plaintiff's application was without merits and in addition had been rendered academic. It was alleged that the essence of the plaintiff's claim was to obtain an injunction and since an AGM had already been convened and office bearers had been elected on 23 March 2003, the whole exercise before the court was academic in nature. It was contended that an injunction that had been previously sought to prevent the AGM from being convened had been dismissed.

[13] The EGM of 18 February 2003 was disputed on the basis that it was convened at the behest of the President in such a manner that it was in breach of rule 10(a)(i) and (ii) of the Rules of JCCCP. It was also questioned on the ground that the members who requisitioned for the meeting to be convened were less than twenty as required under the Rules. In addition the membership of some of the persons who purported to have made the requisition was disputed on the ground that it was breach of rule 7(b) of the Rules of the JCCCP. It was further contended that non-members had participated in the EGM 18 February 2003. Rule 7(b) states:

7 ELECTION OF EXECUTIVE COMMITTEE AND VOTING RIGHTS

(a) .....

(b) At any General Meeting of Members, new members whose election to membership is at the time less than three months and other members whose arrears of subscription exceed six months shall not have the privileged to vote or be voted in for any office. Every member shall be entitled to only one vote. Each firm or corporate member shall send only one representative to take part in the activities of the chamber.

[14] Counsel for the plaintiff's had averred that pursuant to rule 11(3), no proper instructions had been issued to the first plaintiff (in the absence of the secretary) to

convene an EGM. Rule 12(c) provided that in the absence of the secretary, the first plaintiff as assistant secretary was enabled to discharge the functions of a secretary.

[15] The first argument was the issue of the application of the Societies Act 1966. Counsel for the respondent in his written submission had referred to s 16 which is as follows:

> Disputes
>
> 16 (1) If the Registrar is of the opinion that a dispute has occurred among the members or office-bearers of a registered society as a result of which the Registrar is not satisfied of the identity of the persons who have been properly constituted as office-bearers of the society, the Registrar may serve notice on the society requiring the society, within one month of the service of such notice, to produce to him evidence of the settlement of any such dispute and of the proper appointment of the lawful office-bearers of the society or of the institution of proceedings for the settlement of such dispute.
>
> (2) If any such notice as is provided in subsection (1) is not complied with to the satisfaction of the Registrar within the period of one month or any extension thereof allowed by the Registrar, the Registrar may take steps to cancel the registration of the society under s 13

[16] Before the Registrar could form an opinion that a dispute has occurred in order to act under s 16(1) the dispute itself must have been referred to it. Reference had been made to r 12(j) of the JCCCP rules. Rule 12(j) states:

> the arbitration officer shall mediate and arbitrate any dispute among members with their consent (underlining for emphasis)

[17] In the present proceedings the position disclosed was that the defendant as President had declined to convene an EXCO meeting. Instead an EGM had been convened independently of the EXCO which resolved that an AGM be held. The consequence of the EGM was that the secretary and the first plaintiff as assistant secretary to the JCCCP were removed. That same EGM also resolved that the decision of the 12th EXCO meeting was to be rejected and that an AGM was to be convened which was subsequently convened on 23 March 2003 and further authorized the defendant as President of the JCCCP to be secretary and assistant secretary.

[18] Upon reading r 12 (j) it is not a provision that could compel members of the Chamber to resort to arbitrate for it depends on how that provision could be invoked. Rule 12(j) would only compel an arbitration officer to act if the members consent but did not indicate how the mediation processes were to be initiated. It was found that the rules themselves were lacking in providing a proper link between s 16 of the Societies Act 1967 and the JCCCP. In effect the rules of the JCCCP did not of itself really provide that members were only to resort to arbitration for if any one party refused consent, other members would then be left without a remedy. In the present situation it would be doubtful that a dispute could be referred to the Registrar. Section 16 of the Societies Act 1966 did not constitute an exclusive statutory remedy in the circumstances of the present proceedings.

[19] In any case Raja Azlan Shah CJ (Malaya) (as he then was) stated in *Pengarah Tanah & Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 148 said:

> In the first place it must be made clear that the existence of a statutory remedy is no bar to an action for a declaration. This case falls within the general principle that the jurisdiction of the High Court is not to be taken away without express words; and this applies to an action for a declaration:

[20] His Lordship had in that case also applied *Pyx Granite Estates Ltd v Ministry of Housing and Local Government* [1960] AC 260. In the latter case Viscount Simons stated (at p 286)

> It is a principle not by any means to be whittled down that the subjects recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words.

[21] It had been urged by counsel for the defendant that since an annual general meeting had been convened the issue had been rendered academic. However it could not be alleged that the court was being asked to pronounce on an abstract question or that there was no dispute to be resolved. The AGM had passed certain resolutions affecting members. The AGM was convened pursuant to the EGM.

[22] The issue raised pertained to the status of the members of the JCCCP for whom counsel for the plaintiffs referred to *Tan Kah Wich & Ors v Datuk Phua Cheng & Ors.* In that case judicial intervention had been exercised in respect of an infringement of a private right of membership in a society. In the present proceedings there was nothing to indicate that a member had an opportunity to resort to arbitration. The rules of the JCCCP did not indicate how recourse could be made to arbitration in the event of a dispute.

[23] Essentially what was disputed was the power of the President. In perusing the rules and the evidence it was found that the President had displayed a unilateral exercise of powers. It was no doubt contended that the r 12 (a) conferred on the defendant certain powers. The word 'manage' in its ordinary diction also means planning, making, arrangement, define and distribute. The complaint of the plaintiffs focused primarily on the issue of the President exercising powers where it would appear he had derogated to himself certain powers in a manner which was not found in the JCCCP rules.

[24] The validity of the EGM hinged on there being non-compliance with rule 10 (a)(i) and (ii) and the functions of the EXCO. Yet the President had wrested away the powers. His actions also brought into question instances of non-compliance with the provisions of rule 7 (b)where the participation of certain members were questionable on the ground of irregularities in respect of their membership in the JCCCP.

[25] The President had displayed unilateral exercise of powers in infringement of r 7(b) and that resulted in unauthorized members casting votes. The infringement of

A the rules verged on the EGM being wrongfully convened independently of the EXCO which was vested with the power of running the activities of the JCCCP. Pertinent to note is the provision of r 11 (7) of the JCCCP rules.

[26] Since the EGM was convened on the basis of non-compliance with the rules, B it was found that the resolutions undertaken during the EGM of 18 February 2003 were therefore null and void and of no effect. The purported removal of the first plaintiff was also rendered to be of no effect since the EGM should not have been convened in the first place. The justice of the case also indicated that certain members were not given the opportunity to be heard.

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[27] The defendant in my view had failed to rebut the allegations particularly any rationalized explanation for the application of the JCCP rules in the manner that the President had manipulated it. It was evidence of an authoritarian approach and sheer disregard for the JCCCP rules. The plaintiffs had cited another judicial view. Although it was a case from the Republic of Singapore, nevertheless with an almost D identical common law background its persuasive effect was of great value. The view was pronounced in *Hilborne v Singapore Island Country Club* [1996] 2 SLR 468. The relevant passage (at p 483) is the following:

> Club rules, like contract, do not operate in a vacuum. As Lord Wilberforce said in *Reardon-Smith Line Ltd v Yngvar Hansen-Tangen* [1976] 1 WLR 989: No contracts are made E in a vacuum; there is always a setting in which they have to be placed. What Lord Wilberforce said about commercial contracts in that case can with ease be applied to the rules of a club, which by common assent constitute a contract among the members.

[28] Similarly, the functioning of JCCCP according to its rules was like a club or F a society which was to be operated for the benefit of all members. And further in the present proceeding the efficacy of the JCCCP rules were to applied and enforced by all members alike in a fair and reasonable manner. It is axiomatic that all members of a society irrespective of their position are required to adhere to the rules unless express powers are conferred. Rule 11(7) however indicated that it was also not the President who held the ultimate authority in the interpretation of the rules since G stipulated by that rule:

> Between General Meetings, the Executive Committee shall interpret the rules of the Chamber and when necessary determine any matter on which the rules are silent. Except where they are contrary to or inconsistent with the policy previously laid down by the General Meeting the decision of the Executive Committee shall be binding on all members H of the Chamber unless and until countermanded by a resolution of a General Meeting

[29] On a balance of probabilities it was found that the plaintiff had established a case of a President who had purported to act not in accordance with rules which were equally binding on him but had actually acted in excess of the powers. I

[30] The EGM that had been convened at the instance of the defendant, on the basis that it contravened the rules was therefore illegal and in consequence, null and void and consequently too the AGM with all the resolutions that were carried at that time. Order in terms were therefore granted in respect of prayers (1), (2), (3) and (4)

of encl 3. No further order was made in respect of prayers (5), (6), (7) and (8). However a further declaratory order was made that the JCCCP convene a fresh annual general meeting within a reasonable time in a manner consistent with the terms and provisions of the JCCCP Rules.

[31] Cost was to be taxed and to be paid from the funds of the JCCCP.

Plaintiff's application allowed.

Reported by Loo Lai Mee